U.S. Department of Justice

Immigration and Naturalization Service

C

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Newark Date: MAR 22 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

For Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Newark, New Jersey, who certified his decision to the Associate Commissioner, Examinations, for review. The case will be remanded to the director for further action.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director determined that the applicant was not eligible for adjustment of status because he was not inspected and admitted or paroled into the United States. The district director, therefore, denied the application.

In response to the notice of certification, the applicant claims that he was inspected by a Service officer at [redacted] and was subsequently released on October 30, 1996. He submits additional evidence to establish his claim.

When an alien enters the United States within the limits of a city designated as a port of entry, but at a point where immigration officers are not located, the applicable charge is entry without inspection. See Matter of O-, 1 I&N Dec. 617 (BIA 1943); See also Matter of Estrada-Betancourt, 12 I&N Dec. 191 (BIA 1967); Matter of Pierre, 14 I&N Dec. 467 (BIA 1973).

The applicant claims in his application for adjustment of status that he entered the United States without inspection near [redacted] on October 9, 1996.

A review of the record of proceeding reflects the following:

1. [redacted] born in Cuba on [redacted] claims in the application for adjustment of status that he entered the United States without inspection near Mayaguez, Puerto Rico, on October 9, 1996. The record shows that [redacted] released from Service custody upon posting a bond in the amount of $500.

2. The Form I-213 (Record of Deportable/Excludable Alien), issued on October 7, 1996, shows that [redacted]

born in [redacted] on January 26, 1949, entered the United States without inspection near [redacted] on October 7, 1996. On October 8, 1996 [redacted] was released from Service custody upon posting a bond in the amount of $10,000.

3. On July 31, 1997, the immigration judge terminated removal proceedings on behalf of [redacted] aka [redacted]

On April 19, 1999, the Commissioner issued a memorandum setting forth the Service's policy concerning the effect of an alien's having arrived in the United States at a place other than a designated port of entry on the alien's eligibility for adjustment of status under the Cuban Adjustment Act of 1966 (CAA), 8 U.S.C. 1255. In her memorandum, the Commissioner states that this policy does not relieve the applicant of the obligation to meet all other eligibility requirements. In particular, CAA adjustment is available only to applicants who have been "inspected and admitted or paroled into the United States." An alien who is present without inspection, therefore, would not be eligible for CAA adjustment unless the alien first surrendered himself or herself into Service custody and the Service released the alien from custody pending a final determination of his or her admissibility.

The Commissioner concluded that if the Service releases from custody an alien who is an applicant for admission because the alien is present in the United States without having been admitted, the alien has been paroled. This conclusion applies even if the Service officer who authorized the release thought there was a legal distinction between paroling an applicant for admission and releasing an applicant for admission under section 236. When the Service releases from custody an alien who is an applicant for admission because he or she is present without inspection, the Form I-94 should bear that standard annotation that shows that the alien has been paroled under section 212(d)(5)(A).

In a footnote, the Commissioner added that it may be the case that the Service has released an alien who is an applicant for admission because he or she is present without inspection, without providing the alien with a parole Form I-94. In this case, the Service will issue a parole Form I-94 upon the alien's asking for one, and satisfying the Service that the alien is the alien who was released.

Based on the Commissioner's April 19, 1999 memorandum, it appears that the applicant surrendered himself into Service custody and the Service subsequently released him from custody and, therefore, meets the qualification under the new policy. However, it is not

clear whether the applicant [redacted] and [redacted] are one and the same person and that the applicant is the alien who was in fact released from custody.

The case will, therefore, be remanded in order that the district director may determine the correct identity of the applicant, whether the two identified aliens are in fact one and the same person, and whether the applicant is the alien who was in fact released from custody. The district director shall enter a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner, Examinations, for review.

ORDER: The district director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.